

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER
01-CR-165A

RASHEEN NEWKIRK,

Defendant.

Defendant Rasheen Newkirk was convicted after a jury trial of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and on May 15, 2002, the Court sentenced him principally to 112 months' imprisonment. Defendant appealed. On June 21, 2006, the Second Circuit Court of Appeals affirmed defendant's conviction, but in light of United States v. Booker, 543 U.S. 220 (2005), remanded the case for further proceedings consistent with United States v. Crosby, 397 F.3d 103 (2d Cir. 2005). See United States v. Newkirk, 186 Fed. Appx. 116 (2d Cir. 2006).

On October 23, 2006, the defendant filed a memorandum requesting resentencing to a sentence below the applicable guidelines. On November 3, 2006, the government filed a memorandum opposing defendant's request. On November 6, 2006, defendant filed a reply memorandum. Oral argument on defendant's request was held on November 7, 2006.

After considering the currently applicable statutory requirements as explicated in Booker and Crosby, along with the written submissions of the parties, and

after hearing argument from counsel, the Court denies defendant's request for resentencing. Applying the factors in 18 U.S.C. § 3553(a) to the facts and circumstances existing at the time of the original sentence, the Court finds that it would not have imposed a materially different sentence, even if the original sentencing had occurred under the post-Booker regime.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: November 22 , 2006